

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RUBEN FILIUT,
Plaintiff,

v.

APPLEGATE, ET AL.,
Defendants.

Case Number: 05-71514

HON. PATRICK J. DUGGAN

**OPINION AND ORDER DENYING PLAINTIFF'S MOTION FOR LEAVE TO
FILE AN AMENDED COMPLAINT**

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on March 18, 2008.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

Plaintiff Ruben Filiut, an inmate in the custody of the Michigan Department of Corrections, filed a *pro se* civil rights complaint pursuant to 42 U.S.C. §1983. On August 9, 2006, this Court entered a judgment in favor of Defendants and against Plaintiff after granting Defendants' motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). On August 28, 2006, Plaintiff filed a notice of appeal in the Sixth Circuit. The Sixth Circuit affirmed this Court's judgment on July 23, 2007. Now, almost seven months later, Plaintiff has filed a motion for leave to file an amended complaint.

“Following entry of final judgment, a party may not seek to amend their complaint without first moving to alter, set aside or vacate judgment pursuant to Rule 59 or Rule 60 of the Federal Rules of Civil Procedure.” *In re Ferro Corp. Derivative*

Litigation, 511 F.3d 611, 624 (6th Cir. 2008) (quoting *In re Gen. Motors Corp. Anti-Lock Brake Prods. Liab. Litigation*, 174 F.R.D. 444, 446 (E.D. Mo. 1997)). ““Unless postjudgment relief is granted, the district court lacks power to grant a motion to amend the complaint under Rule 15(a) of the Federal Rules of Civil Procedure.”” *Id.* (quoting *Acevedo-Villalobos v. Hernandez*, 22 F.3d 384, 389 (1st Cir. 1994)). In the pending matter, the Sixth Circuit affirmed this Court’s judgment and the time for filing a Rule 59 or Rule 60 motion has expired. *See* FED. R. CIV. P. 59(e) and 60(c).¹ Thus, there is no avenue left for Plaintiff to set aside or vacate the judgment. As a result, there is no live case or controversy pending before this Court in which Plaintiff can file an amended complaint.

Accordingly,

IT IS ORDERED, that Plaintiff’s motion for leave to file an amended complaint is **DENIED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copy to:
Ruben Filiut
#196495
St. Louis Correctional Facility
8585 N. Croswell Road
St. Louis, MI 48880
Christine M. Campbell, A.A.G.

¹Plaintiff did not file a petition for writ of certiorari in the Supreme Court.